



441 G St. N.W.  
Washington, DC 20548

B-338062

February 17, 2026

The Honorable Mike Crapo  
Chairman  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Brett Guthrie  
Chairman  
The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

The Honorable Jason Smith  
Chairman  
The Honorable Richard Neal  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicaid Program; Preserving Medicaid Funding for Vulnerable Populations—Closing a Health Care-Related Tax Loophole*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) entitled “Medicaid Program; Preserving Medicaid Funding for Vulnerable Populations—Closing a Health Care-Related Tax Loophole” (RIN: 0938-AV58). We received the rule on January 30, 2026. It was published in the *Federal Register* on February 2, 2026. 91 Fed. Reg. 4794. The effective date of the rule is April 3, 2026.

According to CMS, this rule addresses a loophole in a regulatory statistical test applied to State proposals for Medicaid tax waivers. CMS states that the test is designed to ensure, as required by statute, that non-uniform or non-broad-based health care-related taxes, authorized under a waiver, are generally redistributive, and the inadvertent loophole currently allows some health care-related taxes, especially taxes on managed care organizations, to be imposed at higher tax rates on Medicaid taxable units than non-Medicaid taxable units, contrary to statutory and regulatory intent for health care-related taxes to be generally redistributive. CMS states that the rule closes the loophole by finalizing the policies in the proposed rule to add additional safeguards to ensure that tax waivers that exploit the loophole because they pass the current statistical test, but are not generally redistributive, are not approvable. CMS further states that

by adding these safeguards, the rule also implements recently added statutory requirements for a tax to be considered generally redistributive.

Enclosed is our assessment of CMS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact me at (202) 512-8156.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'J'.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II  
Regulations Coordinator  
Department of Health and Human Services

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
CENTERS FOR MEDICARE & MEDICAID SERVICES  
ENTITLED  
“MEDICAID PROGRAM; PRESERVING MEDICAID FUNDING FOR  
VULNERABLE POPULATIONS—CLOSING A HEALTH CARE-RELATED TAX LOOPHOLE”  
(RIN: 0938-AV58)

(i) Cost-benefit analysis

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) prepared an analysis of the costs and benefits of this rule. See 91 Fed. Reg. 4794, 4828–33 (Feb. 2, 2026). CMS estimated the rule will result in one-time costs of \$850,631, will reduce federal transfers to states by \$6 billion to \$9.4 billion per year, and will reduce transfers from states to other payers by \$3.6 billion to \$5.7 billion per year. *Id.* at 4833.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

CMS stated that the Secretary of HHS has certified that the rule will not have a significant impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. 91 Fed. Reg. at 4836.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

CMS noted that the Act requires an assessment of the anticipated costs and benefits of a rule mandating spending by state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. 91 Fed. Reg. at 4836. CMS stated that this rule may shift costs from the federal government to states and that the regulatory impact analysis met the Act’s requirement. *Id.* CMS further stated that the rule does not mandate any requirements for local or tribal governments, or for the private sector. *Id.*

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On May 15, 2025, CMS published a proposed rule. 90 Fed. Reg. 20578. CMS stated that they received comments from interested parties. 91 Fed. Reg. at 4801. CMS responded to comments in the rule. *Id.* at 4801–26.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

CMS determined that this rule contains information collection requirements under the Act. 91 Fed. Reg. at 4826.

Statutory authorization for the rule

CMS promulgated this rule pursuant to section 1396b of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CMS stated that the rule is significant under the Order and was reviewed by the Office of Management and Budget. 91 Fed. Reg. at 4828, 4836.

Executive Order No. 13132 (Federalism)

CMS determined that this rule does not have federalism implications. 91 Fed. Reg. at 4836.